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In re Application of WERNHAM et al.
Application No.: 10/539,623
PCT No.: PCT/EP03/51068
Int. Filing: 18 December 2003
Priority Date: 19 December 2002
Attorney Docket No.: 4590-418
For: AN OPTICAL FILTER

: DECISION ON PETITION
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: UNDER 37 CFR 1.47(a)
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This is a decision on applicant's renewed petition under 37 CFR 1.47(a), filed in the United States Patent and Trademark Office (USPTO) on 24 August 2007, to accept the application without the signature of joint inventor, Denny Wernham.

BACKGROUND

On 14 February 2006, a Notification of Missing Requirements (FORM PCT/DO/EO/905) was mailed to applicant indicating *inter alia*, that an oath or declaration in accordance with 37 CFR 1.497(a) and (b) and the surcharge for filing the oath or declaration after the thirty month period was required.

On 14 September 2006, applicant filed a petition along with a declaration, executed by the joint inventors on behalf of the nonsigning inventor. The petition under 37 CFR 1.47(a) in an attempt to satisfy the requirements of 35 U.S.C. 371(c)(4) requested the acceptance of the application without the signature of inventor, Denny Wernham alleging that Mr. Wernham refuses to sign the application. On 01 December 2006, a decision dismissing the petition was mailed indicating that Petitioner had failed to demonstrate that the non-signing inventor refused to sign the application papers.

On 18 January 2007, a renewed petition under 37 CFR 1.47(a) was filed with the USPTO. On 14 June 2007, a decision dismissing the renewed petition was mailed indicating that applicant had not yet demonstrated that the non-signing inventor refused to sign the application papers.

On 14 August 2007, a renewed petition under 37 CFR 1.47(a) was filed with the USPTO.

DISCUSSION

A petition under 37 CFR §1.47(a) must be accompanied by (1) the fee under 37 CFR §1.17(h), (2) factual proof that the non-signing joint inventor(s) refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the non-signing inventor(s), and (4) an oath or declaration by each available joint inventor on his or her own behalf and on behalf of the non-signing joint inventor(s).

Petitioner previously satisfied Items (1), (3) and (4).

With respect to Item (2) above, Petitioner provided a copy of a letter sent on 27 July 2007 to the nonsigning inventor Wernham from David Fleming, Legal & Compliance Director. The letter indicates that a specification, claims, drawings, abstract and declaration/power of attorney were enclosed, making reference to the US patent application 10/539,623, the application at issue. The email correspondence between the nonsigning inventor and Mr. Fleming indicates that Mr. Wernham refuses to sign.

In sum, Petitioner has satisfied Items (1) - (4) above. For the reasons set forth above, the evidence submitted supports a finding that the nonsigning inventor refuses to sign the application at this time. Accordingly, it is appropriate to accord the national stage application status under 37 CFR §1.47(a) at this time.

CONCLUSION

The petition under 37 CFR §1.47(a) is GRANTED.

The U.S. Designated/Elected Office is authorized to accept the application as a 37 CFR 1.47(a) application using the declaration filed 14 September 2007. The application has an international filing date of 18 December 2003 under 35 U.S.C. 363, and a date of 04 September 2003 under 35 U.S.C. 371(c)(1), (c)(2) and (c)(4).

As provided in 37 CFR 1.47(a), a notice of the filing of this application will be forwarded to the non-signing inventors at their respective last known address of record. Also, a notice of the filing of this application will be published in the Official Gazette.



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